

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Performance Measurements and Standards for Interstate Special Access Services)	CC Docket No. 01-321
)	
Petition of U S West, Inc., for a Declaratory Ruling Preempting State Commission Proceedings to Regulate U S West's Provision of Federally Tariffed Interstate Services)	CC Docket No. 00-51
)	
Petition of Association for Local Telecommunications Services for Declaratory Ruling)	CC Docket Nos. 98-147, 96-98, 98-141
)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended)	CC Docket No. 96-149
)	
2000 Biennial Regulatory Review - Telecommunications Service Quality Reporting Requirements)	CC Docket No. 00-229
)	
AT&T Corp. Petition to Establish Performance Standards, Reporting Requirements, and Self-Executing Remedies)	RM 10329
Need to Ensure Compliance by ILECs with Their Statutory Obligations Regarding Special Access Services)	

**COMMENTS OF THE AD HOC
TELECOMMUNICATIONS USERS COMMITTEE**

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**COMMENTS OF THE AD HOC
TELECOMMUNICATIONS USERS COMMITTEE**

The Ad Hoc Telecommunications Users Committee (the "Ad Hoc Committee") submits these Comments in response to the Notice of Proposed Rulemaking ("NRPM") in the above-referenced docket.¹ For the reasons set forth

¹ *Performance Measurements and Standards for Interstate Special Access Services*, CC Dkt. No. 01-321, Notice of Proposed Rulemaking, FCC 01-339 (released November 19, 2001), 66 Fed. Reg. 63651 (December 10, 2001).

below, the Ad Hoc Committee supports the adoption of performance measurements and standards for the provisioning of interstate special access services² by incumbent local exchange carriers (“ILECs”).

INTRODUCTION AND SUMMARY

Members of the Ad Hoc Committee are among the nation’s largest corporate users of telecommunications services, including interstate special access services. Large organizations, such as the Ad Hoc members, rely heavily on interstate special access services to meet their telecommunications needs. When necessary circuits are unavailable to large users – whether because of provisioning delays, ineffective or untimely restoration of defective circuits, or other ILEC inefficiencies -- these organizations experience business interruptions, increased costs, and unexpected and significant demands on their telecommunications personnel.

If meaningful competition existed in special access markets, all providers’ performance would improve and FCC regulation of carrier performance would be unnecessary. But despite the ILECs’ repeated claims to the contrary, competition has not yet developed in special access markets, as even a cursory analysis of the ILECs’ special access pricing demonstrates. Rates are *higher* in markets where the Commission has granted ILECs Phase II pricing flexibility³ than in markets still subject to price cap regulation – an outcome that is exactly

² As used in these Comments, the term “provisioning” includes ordering, provisioning (*i.e.*, furnishing), maintenance, and repair of interstate special access circuits, unless otherwise indicated.

³ See *Access Charge Reform*, 14 FCC Rcd 14,221 (1999) (*Access Reform Fifth Report and Order*).

the opposite of what a competitive market would produce and completely consistent with a market in which the ILECs are maintaining their legacy market power. Without competitive pressures, incumbent providers have no incentive to improve the quality or timeliness of their service. Until effective competition emerges and produces demonstrable progress in these areas, effective performance measurements and standards are the only way access customers can expect to curb provisioning deficiencies and minimize the costs and burdens those deficiencies place on them.

DISCUSSION

I. COMPETITION FOR SPECIAL ACCESS SERVICES, EVEN IN THE MOST COMPETITIVE MARKETS, IS INSUFFICIENT TO CONSTRAIN PRICES OR TO IMPROVE PERFORMANCE.

As described below, the ILECs' pricing behavior in markets where they have received Phase II Pricing Flexibility demonstrates that the level of competition, even in the most competitive markets, has not constrained ILEC behavior in a manner consistent with a truly competitive market.

In fully competitive markets, competition will produce reasonable and efficient pricing and service provisioning. In the absence of such competition, however, customers are forced to accept the terms and quality of service dictated by the dominant provider, as is the case with ILEC special access services. According to the NPRM, the ILECs assert that competitive conditions in the high-capacity special access market make it unnecessary for the Commission to set

and enforce service performance standards.⁴ The special access provisioning experience of the Ad Hoc Committee's members, however, has not been consistent with the competitive market conditions the ILECs claim.

To develop objective data regarding the level of special access competition, Ad Hoc has examined pricing data for the Market Service Areas (MSAs) in which ILECs have been granted pricing flexibility on the basis of their demonstration that competing service providers are present.⁵ Under the pricing flexibility rules, the price caps and Part 69 rules no longer apply to the generally available pricing for special access in these areas because the Commission concluded that market forces would discipline rates where the ILECs have made a Phase II showing of competitive presence.⁶ If the alleged competition has proven to be insufficient to constrain ILEC pricing of special access services, it cannot be expected to discipline ILEC deployment and service quality.

In fact, Ad Hoc's review of generally available pricing data for special access services in MSAs where Phase II pricing flexibility has been granted reveals that ILECs are charging higher prices in those MSAs – where competition is presumably greatest – than in the non-Phase II areas in the same states and

⁴ NPRM at ¶ 14.

⁵ Pursuant to the *Fifth Report and Order and Further Notice of Proposed Rulemaking* in the *Access Reform* proceeding (*supra*, note 3), the Commission has granted pricing flexibility to ILECs for special access services in each MSA in which the ILEC could demonstrate the existence of certain competitive conditions. See, e.g., *Verizon Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD Nos. 00-24, 00-28, Memorandum Opinion and Order, DA 01-663 (released March 14, 2001). Those ILECs may now offer contract-based pricing for special access services, in addition to maintaining generally available pricing for special access customers that have not negotiated contractual arrangements. In MSAs to which Phase II flexibility applies, the generally available pricing is not regulated under the Commission's price caps rules, nor are the prices constrained by the Part 69 access rate structures or levels.

⁶ *Id.*, at ¶ 155.

density zones, where competition supposedly has not developed. Indeed, our analysis revealed no instance of lower prices for generally available services in the MSAs to which Phase II pricing flexibility applies.

Tables 1-3, attached hereto as Appendix 1, summarize the results of Ad Hoc's analysis of the prices for DS1 and DS3 special access facilities in the tariffs of BellSouth, SWBT and Verizon. Although we have not reviewed all tariffs filed by these carriers, we have comprehensively reviewed certain tariffs of each. As the tables demonstrate, generally available pricing for a large number of pricing elements for DS1 and DS3 special access services is higher in the supposedly more competitive Phase II MSAs than in exchanges for which pricing flexibility has not been granted. While the Phase II prices for all rate elements are not higher -- some are still set at the same levels as regulated services -- the overall prices for high-capacity circuits comprised of these elements are higher.

For example, the price for a zero-mile DS1 special access circuit (using two channel terms and no interoffice mileage) offered by Verizon in downtown Springfield, Massachusetts (a city designated for Phase II pricing flexibility) is presently \$451.26 per month -- almost 10% higher than the \$412.24 price that would be in effect if Springfield had not been granted Phase II flexibility.⁷ Verizon maintains three pricing schedules for the Verizon territories comprising the former NYNEX states -- *i.e.*, for Massachusetts, New York, and the remaining New England states -- but the results would be quite similar for any exchange in

⁷ A sample circuit with five miles of interoffice mileage would be priced at \$643.11 under the deregulated pricing flexibility rules, 7.7% higher than the \$597.09 monthly price that would apply without Phase II pricing flexibility status. Verizon Telephone Company Access Tariff FCC No. 11, Sections 30.7.9 (pricing flexibility rates), 31.7.9 (standard rates).

which pricing flexibility has been made available in those states, although the exact price levels would differ. In downtown Manhattan, for example, the price for DS1 special access between two locations served by the same wire center would be \$387.76, more than \$30.00 (close to 10%) higher than the rates that would be in effect if the Commission had not granted Phase II pricing flexibility to NYNEX for New York City.

If competition is insufficient to restrain the ILECs from raising the prices of special access services, the Commission cannot assume that it is sufficient to discipline ILEC behavior in terms of deployment and service quality. In the absence of such competition, and to protect end user customers from poor provisioning and service quality, Ad Hoc urges the Commission to adopt performance measurements and standards for special access services.

II. THE COMMISSION SHOULD CONSIDER END USERS' NEEDS WHEN EVALUATING PROPOSALS FOR SPECIAL ACCESS PERFORMANCE STANDARDS.

The Commission has properly acknowledged the interests of competitive local exchange carriers ("CLECs") and interexchange carriers ("IXCs") in improved special access provisioning. Carriers are not the only beneficiaries of improved provisioning, however, nor are they the only parties harmed by poor provisioning. The Ad Hoc Committee urges the Commission to recognize that, ultimately, it is the end-user customer who pays the price for untimely or unreliable provisioning of interstate special access services. Thus, in evaluating the need for, and adequacy of, proposed performance measurements and standards, the Commission should consider not only the interests of IXCs and

CLECs, but also those of end-user customers.

Accordingly, while standards designed to eliminate ILEC discrimination against unaffiliated service providers are important, they will not address the concerns of end users unless they also curb unjust and unreasonable provisioning practices and improve special access provisioning from the *end user's* perspective. In other words, ILEC services can be non-discriminatory and still be unjust and unreasonable. For example, large end users have a particular interest in timely installation of special access circuits and prompt restoration of defective circuits. Performance standards that focus on the incumbents' discriminatory deviations from their usual installation intervals, rather than on the reasonableness of the intervals themselves, may alleviate ILECs' preferential treatment of affiliated service providers, but they do nothing to address the reasonableness of the intervals for both providers and end-user customers. A rule that requires the ILECs to treat all access customers the same, but badly, does nothing to protect the interests of end users in just and reasonable terms and conditions of service. The Commission should not allow its focus on discriminatory practices to become the source of a tide that drops all boats.

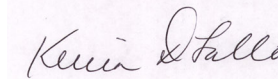
CONCLUSION

Competition has not developed in interstate special access markets to the point where the FCC can simply defer to market forces to ensure quality service for end users. The Ad Hoc Committee looks forward to evaluating the various proposals for performance measurements and standards that may be advanced in the record of this proceeding and urges the Commission to ensure that any

standards that it may ultimately adopt take into account the needs of both carriers and their customers.

Respectfully submitted,

AD HOC TELECOMMUNICATIONS
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APPENDIX 1

Table 1

Review of DS1 Special Access Channel Terminal Rates Reveal Several Examples in Which Prices Are Higher in Areas where Phase II Pricing Flexibility has been Granted

Company Name	State	Zone/Band	Standard Pricing Rate DS1 Local Channel	Phase II Pricing Flexibility DS1 Local Channel	% By Which Phase II Prices Are Higher
Verizon FCC#1	DC, DE, MD, NJ, PA, VA, WV	Zone 1/Band 4	\$198.24	\$225.63	14%
Verizon FCC #11	MA	Zone 1/Band 4	\$206.12	\$225.63	9%
Verizon FCC #11	NY	Zone 1/Band 4	\$177.12	\$193.88	9%
Verizon FCC #11	ME,NH,RI,VT	Zone 1/Band 4	\$267.72	\$293.06	9%
Bell South FCC #1	All states	Zone1/Band 4	\$150.00	\$168.00	12%

Sources:

Verizon FCC # 1: Section 7.5.9.(A) (1) (a) -- 3rd revised page 7-250 (standard and Phase II pricing)

Verizon FCC # 11: Section 30.7.9.(A) (1) (a) -- 1st revised page 30-55 (Phase II pricing)
Section 31.7.9.(A) (1) (a) -- 2nd revised page 31-122 (standard pricing)

Bell South FCC # 1: Section 7.5.2.9 (A) (1) (a) -- 6th revised page 7-144.1 (standard pricing)
Section 23.5.2.9 (A) (1) (a) -- 1st revised page 23-80 (Phase II pricing)

Table 2

Review of DS1 Special Access Mileage Charges Reveal Several Examples in Which Prices Are Higher in Areas where Phase II Pricing Flexibility has been Granted

Company Name	State	Zone/Band	Standard Pricing Rate DS1	Phase II Pricing Flexibility Rate DS1	% By Which Phase II Prices Are Higher
Southwestern Bell FCC # 73	AR, KS, MO OK	All Zones/Bands Fixed Per Mile	\$60.00 \$15.70	\$60.00 \$16.80	0% 7%
Verizon FCC # 1	DC, DE, MD, NJ PA, VA, WV	All Zones/Bands Fixed Per Mile	\$46.66 \$21.40	\$55.00 \$27.37	18% 28%
Verizon FCC # 11	MA, ME, NH NY, RI, VT	All Zones/Bands Fixed Per Mile	\$53.00 \$26.37	\$55.00 \$27.37	4% 4%
Bell South FCC # 1	All States	Zone 1 Fixed Per Mile	\$75.00 \$17.25	\$85.00 \$18.00	13% 4%

Sources:

SWBT # 73 Section 7.3.10.F (2) -- 12th revised 7-186 (standard pricing)
 Section 39.5.2.7 (B) -- 1st revised page 39-67 (Phase II pricing)

Verizon FCC # 1: Section 7.5.9.(B) (1) (b) -- 2nd revised page 7-264 (standard and Phase II pricing)

Verizon FCC # 11: Section 30.7.9.(B) (2) -- 1st revised page 30-114 (Phase II pricing)
 Section 31.7.9.(B) (2) -- 1st revised page 31-147 (standard pricing)

Bell South FCC # 1: Section 7.5.2.9 (B) (2) -- 13th revised page 7-146 (standard pricing)
 Section 23.5.2.9 (B) (2) -- 1st revised page 23-163 (Phase II pricing)

Table 3

**Review of DS3 Special Access Channel Terminal Rates Reveal Several Examples in Which
Prices Are Higher in Areas where Phase II Pricing Flexibility has been Granted**

Company Name	State	Zone/Band	Standard Pricing Rate DS3	Phase II Pricing Flexibility Rate DS3	% By Which Phase II Prices Are Higher
Verizon FCC # 1	DC, DE MD, NJ, PA, VA WV	Zone 1/Band 4	\$2,667.50	\$3,025.00	13%
		Zone 2/Band 5	\$2,800.88	\$3,176.25	13%
		Zone 3/Band 6	\$2,934.25	\$3,327.50	13%
Verizon FCC # 11	MA, NY	Zone 1/Band 4	\$2,310.00	\$2,541.00	10%
		Zone 2/Band 5	\$2,425.50	\$2,668.05	10%
		Zone 3/Band 6	\$2,541.00	\$2,795.00	10%
Verizon FCC # 11	ME, NH RI, VT	All Zones/Band	\$2,541.00	\$2,795.00	10%
BellSouth FCC # 1	All states	All Zones/Band	\$1,840.00	\$2,070.00	13%

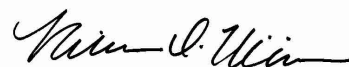
Sources:

- Verizon FCC # 1: Section 7.5.9.(A) (1) (a) -- 1st revised pages 7-251 to 7-2.53.3, (standard and Phase II pricing)
- Verizon FCC # 11: Section 30.7.9.(A) (1) (c) -- 1st revised pages 30-57 to 30-59 and 30-63 to 30-65 (Phase II pricing)
Section 31.7.9.(A) (1) (c) -- Original pages 31-123 to 31-125 and 31-129 (standard pricing)
- Bell South FCC # 1: Section 7.5.2.9 (A) (3) (a) -- 4th revised page 7-145.0.1.1 (standard pricing)
Section 23.5.2.9 (A) (3) (a) -- 1st revised page 23-83 (Phase II pricing)

Certificate of Service

I, Michaelleen Williams, hereby certify that true and correct copies of the preceding Comments of the Ad Hoc Telecommunications Users Committee was served this January 22, 2002 via the FCC's ECFS system, and by first class mail upon the following:

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January 22, 2002